

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

MICHAEL H. HOLLAND, MICHAEL O.
McKOWN, PAUL PICCOLINI and CARLO
TARLEY as Trustees of the UNITED MINE
WORKERS OF AMERICA 1992 BENEFIT
PLAN,
2121 K Street, N.W., Suite 350
Washington, D.C. 20037

Plaintiffs,

v.

BLUESTONE COAL CORPORATION
a corporation
P.O. Box 2178
Beaver, WV 25813 and
302 S. Jefferson St.
Roanoke, VA 24011

and

BLUESTONE INDUSTRIES INC.
a corporation
P.O. Box 2178
Beaver, WV 25813

and

KEYSTONE SERVICE INDUSTRIES INC.
a corporation
P.O. Box 2178
Beaver, WV 25813

Defendants.

Civil Action No. 5:21-cv-00472

COMPLAINT

1. Plaintiffs, Michael H. Holland, Michael O. McKown, Paul Piccolini, and Carlo Tarley are the Trustees of the United Mine Workers of America 1992 Benefit Plan (the “1992 Plan”). The Trustees are fiduciaries with respect to the 1992 Plan within the meaning of Section 3(21)(A) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1002(21)(A). The Trustees conduct the business of the 1992 Plan at 2121 K Street, N.W., Suite 350, Washington, D.C. 20037.

2. The 1992 Plan is an irrevocable trust fund created pursuant to Section 9712 of the Coal Industry Retiree Health Benefit Act of 1992 (the “Coal Act”), 26 U.S.C. § 9712.

3. The 1992 Plan is a plan described in Section 302(C)(5) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5); an employee welfare benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3); and a multiemployer plan within the meaning of Section 3(37) of ERISA, 29 U.S.C. § 1002(37).

4. Defendant Bluestone Coal Corporation (“Bluestone”) is or was a West Virginia corporation, with an office and/or address at P.O. Box 2178, Beaver, WV 25813, and 302 S. Jefferson St., Roanoke VA 24011.

5. Defendant Bluestone Industries, Inc. (“Bluestone Industries”) is or was a West Virginia corporation, with an office and/or address at P.O. Box 2178, Beaver, WV 25813.

6. Defendant Keystone Service Industries, Inc. (“Keystone”) is or was a West Virginia corporation, with an office and/or address at P.O. Box 2178, Beaver, WV 25813.

7. Jurisdiction is conferred on this Court by Section 9721 of the Coal Act, 26 U.S.C. § 9721; Section 4301(d) of ERISA, 29 U.S.C. § 1451(d); and Section 502(e) of ERISA, 29 U.S.C. § 1132(e).

8. Venue is proper in this district under Section 9721 of the Coal Act, 26 U.S.C. § 9721; Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2); and Section 4301(d) of ERISA, 29 U.S.C. § 1451(d), in that Defendants are or were incorporated in West Virginia and are or were engaged in their normal business activities within this district.

9. Defendant Bluestone is or was engaged in operating a certain coal mine, or mines, or coal mining business and/or transporting or cleaning coal.

10. Defendant Bluestone is a “1988 Last Signatory Operator” as that term is defined in Section 9712(d)(6) of the Coal Act, 26 U.S.C. § 9712(d)(6).

11. Defendant Keystone is or was engaged in operating a certain coal mine, or mines, or coal mining business and/or transporting or cleaning coal.

12. Defendant Keystone is a “1988 Last Signatory Operator” as that term is defined in Section 9712 (d)(6) of the Coal Act, 26 U.S.C. § 9712(d)(6).

13. Pursuant to Section 9712(d)(1)(A) of the Coal Act, 26 U.S.C. § 9712(d)(1)(A), defendant Bluestone is liable for the payment of monthly per beneficiary premiums to the 1992 Plan for its eligible beneficiaries receiving benefits from the 1992 Plan.

14. Defendants Bluestone, Bluestone Industries and Keystone are “related persons” within the meaning of Section 9701(c)(2)(A) of the Coal Act, 26 U.S.C. § 9701(c)(2)(A), and shall be referred to collectively herein as Defendants.

15. As “related persons” within the meaning of Section 9701(c)(2)(A) of the Coal Act, 26 U.S.C. § 9701(c)(2)(A), Defendants are jointly and severally liable for the monthly per beneficiary premiums owed to the 1992 Plan, pursuant to Section 9712(d)(4) of the Coal Act, 26 U.S.C. § 9712(d)(4).

16. Defendants ceased payments of monthly per beneficiary premiums to the 1992 Plan in June 2017. Defendants have failed to pay the required monthly per beneficiary premiums to the 1992 Plan for the period July 15, 2017 through August 15, 2021, in the principal amount of \$78,954.56. Therefore, Defendants have failed to discharge their obligations under Section 515 of ERISA, 29 U.S.C. § 1145, and Sections 9712(d)(1)(A) and (d)(4) of the Coal Act, 26 U.S.C. §§ 9712(d)(1)(A), (d)(4), and have caused the 1992 Plan to sustain loss of income, incur administrative and legal expenses and suffer continuing and irreparable injury.

WHEREFORE, the Plaintiffs pray for the following relief:

- (a) A declaration that Defendants Bluestone, Bluestone Industries, and Keystone are related persons within the meaning of Section 9701(c)(2)(A) of the Coal Act, 29 U.S.C. § 9701(c)(2)(A);
- (b) A declaration that Defendants are jointly and severally liable to the 1992 Plan for monthly per beneficiary premiums from July 15, 2017 through August 15, 2021, in the amount of \$78,954.56, and any additional unpaid monthly premiums that accrue during the pendency of this action;
- (c) Judgment jointly and severally for the entire liability set forth in paragraph (b), plus interest thereon from the date such amounts became due and owing, together with liquidated damages, pursuant to Section 9721 of the Coal Act, 26 U.S.C. § 9721; Sections 502(g)(2), 515, and 4301(b) of ERISA, 29 U.S.C. §§ 1132(g)(2), 1145, and 1451 (b), and for all amounts that become due during the pendency of this action;

- (d) A permanent injunction enjoining Defendants from failing to pay their premiums to the 1992 Plan;
- (e) Judgment for attorney's fees and other costs and disbursements in this action;
- (f) That the Court retain jurisdiction of this case pending compliance with its orders; and
- (g) For such other and further relief as the Court may deem just.

Respectfully submitted,

CLAYTON M. CRESWELL
Senior Assistant General Counsel
DC Bar# 418206

GLEND A FINCH
General Counsel
DC BAR# 254763

LARRY D. NEWSOME
Associate General Counsel
DC BAR#420503

UMWA HEALTH & RETIREMENT FUNDS
Office of the General Counsel
2121 K Street, N.W., Suite 350
Washington, D.C. 20037
Telephone: (202) 521-2238

/s/ James Woodrow "Woody" Hill/s/

JAMES WOODROW "WOODY" HILL
Local Counsel and Outside Co-Counsel
WV Bar #9209

WOODY HILL – ATTORNEYS AT LAW - PLLC
Chase Tower Suite 1450
707 Virginia Street East

Charleston, WV 25301
Telephone: (304) 984-6700

Attorneys for Plaintiffs